

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:07-CR-128-D
No. 7:11-CV-265-D

GRATINIANO CASTILLO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.


ORDER

On January 2, 2014, Gratiniano Castillo ("Castillo") filed a motion to vacate his conviction pursuant to Federal Rule of Civil Procedure 60(b)(3) [D.E. 130]. Castillo complains that when he was arrested in Texas in 2007, the Texas Department of Public Safety held him for more than 72 hours without charging him. Castillo describes this alleged conduct as prosecutorial misconduct, contends that it violated due process, and seeks to have his conviction in this court vacated.

Castillo is a familiar litigant, who pleaded guilty and was sentenced in 2008, lost his direct appeal in 2010, and lost his motion under 28 U.S.C. § 2255 in 2012. See United States v. Castillo, 450 F. App'x 231 (4th Cir. 2010) (per curiam) (unpublished); Castillo v. United States, No. 7:07-CR-128-D, [D.E. 123] (E.D.N.C. Sept. 27, 2012) (unpublished), appeal dismissed, No. 12-7924, [D.E. 8] (4th Cir. Jan. 7, 2013) (unpublished). Castillo's latest argument appears doomed in light of his guilty plea. See, e.g., Tollett v. Henderson, 411 U.S. 258, 266–67 (1973). Nonetheless, Castillo has not received authorization from the United States Court of Appeals for the Fourth Circuit to file his Rule 60(b) motion. Thus, the court lacks jurisdiction to consider the motion. See, e.g., United States v. Winestock, 340 F.3d 200, 206–07 (4th Cir. 2003).

In sum, Castillo's motion for relief under Rule 60(b)(3) is DISMISSED. The court DENIES a certificate of appealability. See 28 U.S.C. § 2253(c).

SO ORDERED. This 14 day of March 2014.


JAMES C. DEVER III
Chief United States District Judge